

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA

RICHARD J. HARDENBROOK,	)	3:06-CV-431-ECR-VPC
	)	
Plaintiff,	)	
	)	
v.	)	<b><u>ORDER</u></b>
	)	
EMPLOYEES OF U.S. DEPARTMENT	)	
OF THE INTERIOR, etc., et al.,	)	
	)	
Defendants.	)	
	)	

Mr. Hardenbrook ("Plaintiff") filed his Third Amended Complaint (#48) on February 1, 2007. This complaint names as defendants the Secretary of the Interior, employees of the United States Department of the Interior, the current Governor of the State of Nevada, a former Governor of the State of Nevada, as well as a variety of state employees. The caption of Plaintiff's complaint states that this case was "reinstated" from a case (3:05-CV-242-HDM-RAM) that was previously dismissed by this court and also dismissed on appeal for lack of jurisdiction. Before the Court are motions to dismiss filed by the federal and state defendants. (## 56, 57.)

As an initial matter, we note that Plaintiff misunderstands several basic procedural facts regarding litigation in a federal court: The record in the previously dismissed case is not a part of this case, and to the extent that he suggests that this is the same

1 case (using the words "reinstate"), he also suggests that his claims  
2 are barred by the doctrine of claim preclusion. Further, the  
3 motions filed by Defendants ask the Court to evaluate whether  
4 Plaintiff has stated a claim for which relief can be granted, not  
5 whether Plaintiff has evidence to support a valid claim. Thus, at  
6 this stage, Plaintiff's legal claims are at issue, not the  
7 sufficiency of any evidence that he may wish the Court to consider.

8 Plaintiff's complaint objects to a land transfer and decisions  
9 regarding a fire station built on land allegedly received by the  
10 state via a United States land patent. Plaintiff alleges that these  
11 state land use decisions involve a "VIOLATION of the PEOPLES TRUST /  
12 UNDER COLOR [sic]." He seeks to have a grand jury review this case,  
13 and an order from this Court to have the land returned to the  
14 federal government, to have land returned to the Scripps Wildlife  
15 Management Area, to have this Court order the State of Nevada to  
16 enforce the terms of the land patent that he alleges have been  
17 breached, to have this Court "[s]uggest to Truckee Meadows Fire  
18 Department to ask the State of Nevada for Relief," and to have this  
19 Court award him litigation fees and costs.

20 As this is a civil case, no grand jury will review the  
21 evidence, and Plaintiff lacks standing to make this request in any  
22 case.

23 The Court notes that the "public trust doctrine," which some  
24 courts have applied to tidelands and bodies of water, does not apply  
25 in this case for a variety of reasons. See, e.g., Illinois Cent. R.  
26 Co. v. State of Illinois, 146 U.S. 387 (1892); National Audubon  
27 Society v. Superior Court, 33 Cal.3d 419 (1983). Further, as the

1 federal defendants point out, there is no cause of action for a  
2 third party to challenge a federal land patent. See Raypath, Inc.  
3 v. City of Anchorage, 544 F.2d 1019, 1021 (1976) ("[a]s a matter of  
4 federal law, it is well established that the validity of a deed or  
5 patent from the federal government may not be questioned in a suit  
6 brought by a third party against the grantee or patentee"). Thus,  
7 this Court need not deal with a second issue that would otherwise  
8 arise from the face of the complaint, which is whether Plaintiff has  
9 standing to raise these claims in this Court. See id. at 1021.  
10 Further, for reasons involving both federalism and the division of  
11 powers, this Court lacks authority to order any of the defendants to  
12 file an action advancing Plaintiff's allegations. See Heckler v.  
13 Chaney, 470 U.S. 821, 831 (1985) (decisions by the executive branch  
14 regarding whether to enforce laws are presumptively non-reviewable).  
15 In light of this fact, this Court need not reach the issue of  
16 whether the state officials named in the suit are immune from suit  
17 under the Eleventh Amendment.

18 **IT IS, THEREFORE, HEREBY ORDERED** that the defendants' motions  
19 to dismiss (##56, 57) are **GRANTED**. All other pending motions (##58,  
20 59), however construed, are **DENIED** as moot. The clerk shall enter  
21 judgment accordingly.

22  
23 DATED: This 10th day of January, 2008.

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25 \_\_\_\_\_  
26 UNITED STATES DISTRICT JUDGE  
27  
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